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Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BRUCE CAMPBELL,

Plaintiff,

v.

TIMOTHY GEITHNER, Secretary, U.S.
Department of Treasury,

Defendant.

Docket No. C 10-5861 LB

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT
AND ~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED by and between the parties, after full and open discussion, that this action be settled and compromised on the following terms:

WHEREAS, Plaintiff filed the above-captioned action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16, as amended, the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act (ADEA) 29 U.S.C. § 633a;

WHEREAS, Plaintiff has filed the following administrative EEO complaints with the Internal Revenue Service: IRS-09-0083-F

WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to settle and compromise fully any and all claims and issues that have been raised, or could have been raised, arising out of Plaintiff's employment with Defendant, which have transpired prior to the execution of this Agreement;

STIPULATION AND AGREEMENT FOR COMPROMISE AND SETTLEMENT
No. C 10-5861 LB

1 NOW, THEREFORE, in consideration of the mutual promises contained in this
 2 Agreement, and other good and valuable consideration, receipt of which is hereby
 3 acknowledged, the Parties agree as follows:

4 **1. Settlement Amount.** In full and final settlement of all claims in connection with the
 5 above-captioned action, defendant shall pay Plaintiff a total sum of two thousand dollars and
 6 zero cents (\$2000.00) ("Settlement Amount"). There shall be no withholding from this
 7 amount. Plaintiff understands that this payment will be reported to the Internal Revenue
 8 Service ("IRS"), and that any questions as to the tax liability, if any, as a result of this payment
 9 is a matter solely between Plaintiff and the IRS. The check will be made payable to Bruce
 10 Campbell, and will be mailed to Plaintiff. Plaintiff ~~attorney~~ ^{by [signature]} has been informed that payment
 11 of the Settlement Amount may take sixty (60) days or more from the date that the Court "so
 12 orders" this Agreement to process.

13 **2. Release.** In consideration of the payment of the Settlement Amount and the other
 14 terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever
 15 discharges Defendant, the United States Department of Treasury, the IRS, and any and all of
 16 their past and present officials, agents, employees, attorneys, insurers, their successors and
 17 assigns, from any and all obligations, damages, liabilities, actions, causes of actions, claims and
 18 demands of any kind and nature whatsoever, including claims arising under the Age
 19 Discrimination in Employment Act, 29 U.S.C. § 633a, whether suspected or unsuspected, at
 20 law or in equity, known or unknown, or omitted prior to the date he executes this Agreement,
 21 which arise from or relate to his employment with the IRS.

22 **3. Attorneys' Fees.** The parties agree that the Settlement Amount is in full
 23 satisfaction of all claims for attorneys' fees and costs arising from work performed by Plaintiff's
 24 counsel at all stages of litigation, including, but not limited to, the processing of Plaintiff's
 25 administrative and district court complaints in connection with the above-captioned action, and
 26 any other EEO administrative proceedings which are currently pending.

27 **4. Dismissal.** In consideration of the payment of the Settlement Amount and the other
 28 terms of this Stipulation and Agreement, Plaintiff shall immediately upon execution of this

1 Agreement also execute a Stipulation of Dismissal, a copy of which is attached hereto as
 2 Exhibit A. The Stipulation of Dismissal shall dismiss, with prejudice, all claims asserted in
 3 this action, or that could have been asserted in this action. The fully executed Stipulation of
 4 Dismissal will be held by counsel for Defendant and will be filed with the Court upon receipt
 5 by Plaintiff of the Settlement Amount and Plaintiff's corrected Standard Form 50.

6 5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
 7 Section 1542 are set forth below:

8 "A general release does not extend to claims which the creditor
 9 does not know or suspect to exist in his or her favor at the time
 of executing the release, which if known by him or her must have
 materially affected his or her settlement with the debtor."

10 Plaintiff has been apprised of the statutory language of Civil Code Section 1542, and fully
 11 understanding the same, nevertheless elects to waive the benefits of any and all rights he may
 12 have pursuant to the provision of that statute and any similar provision of federal law. Plaintiff
 13 understands that, if the facts concerning Plaintiff's claims and the liability of the government
 14 for damages pertaining thereto are found hereinafter to be other than or different from the facts
 15 now believed by them to be true, this Agreement shall be and remain effective notwithstanding
 16 such material difference.

17 6. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and
 18 complete defense to any subsequent action or other proceeding involving any person or party
 19 which arises out of the claims released and discharged by the Agreement.

20 7. **No Admission of Liability.** This is a compromise settlement of a disputed claim
 21 and demand, which settlement does not constitute an admission of liability or fault on the part
 22 of the Defendant, the U.S. Department of the Treasury, the IRS, or any of their past and present
 23 officials, agents, employees, attorneys, or insurers on account of the events described in
 24 Plaintiff's complaints in these actions.

25 8. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff
 26 or Plaintiff's counsel based on payment of the settlement sum received herein, Plaintiff or
 27 Plaintiff's counsel shall be solely responsible for paying any such determined liability from any
 28

1 government agency thereof.

2 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with
3 respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind
4 the Agreement and pursue his original causes of action. Plaintiff's sole remedy in such a
5 dispute is an action to enforce the Agreement in the United States District Court for the
6 Northern District of California.

7 10. **Construction.** Each party hereby stipulates that it has had the opportunity to seek
8 and rely upon independent counsel in the negotiations for the preparation of this Stipulation
9 and Agreement, that it has had the opportunity to have the contents of the Stipulation and
10 Agreement fully explained to it by independent counsel, and is fully aware of and understands
11 all of the terms of the Stipulation and Agreement and the legal consequences thereof. For
12 purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to
13 this Agreement and shall not, therefore, be construed against any Party for that reason in any
14 subsequent dispute.

15 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
16 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
17 any way be affected or impaired thereby.

18 12. **Integration.** This instrument shall constitute the entire Agreement between the
19 parties, and it is expressly understood and agreed that the Agreement has been freely and
20 voluntarily entered into by the parties hereto with the advice of counsel, who have explained
21 the legal effect of this Agreement. The parties further acknowledge that no warranties or
22 representations have been made on any subject other than as set forth in this Agreement. This
23 Agreement may not be altered, modified or otherwise changed in any respect except by writing,
24 duly executed by all of the parties or their authorized representatives.

25 13. **Authority.** The signatories to this Agreement have actual authority to bind the
26 parties.

27 14. **Expungement of Personnel Records.** In addition to the terms described in
28 paragraph 1 above, Defendant agrees to the following:

(A) Defendant shall expunge from the plaintiff's Official Personnel Folder ("OPF") all records of his termination, and replace such records with a Standard Form 50 reflecting that plaintiff voluntarily resigned on September 26, 2008.

(B) If any formal inquiries about the plaintiff's employment history are made to the IRS, Defendant shall direct such inquiries to the IRS's automated employment verification system at 800-367-2884 or online at www.irs.gov or his successor at (Business address and telephone number). The only information that will be released by Mr. _____ or his

successor will be the plaintiff's name, salary, dates of service with the agency, position, grade, and that he voluntarily resigned. Defendant's obligations under this subparagraph shall expire five (5) years after the date this agreement is "so ordered" by the Court.

15. **Application for Future Employment.** Plaintiff agrees that he will not apply for employment at the IRS following the date of his signature on this agreement. *not including other subagencies within the Department of Treasury.*

16. **Knowing and Voluntary Waiver of Remedies Under Age Discrimination in Employment Act.** Plaintiff acknowledges that he has been given a reasonable period of time to consider this Agreement. Plaintiff is advised to consult his attorney about the Agreement.

DATED: 8-25-2011

Bruce Campbell
Plaintiff **BRUCE CAMPBELL**

DATED: August 25, 2011

Jennifer Wang
Assistant United States Attorney
Attorney for Defendant

DATED: Aug. 25, 2011

Maya K. Gibbons
Agency Representative **Maya K. Gibbons**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 27, 2011

Laurel Beeler
United States District Judge

LAUREL BEELER
United States Magistrate Judge

(cc) Defendant will make his best effort to provide to plaintiff the form letter that IRS provides to employees who voluntarily resign, and if possible, place a copy of the letter in the plaintiff's OPF.

the work number.com
Michelle
US Dept of Treasury

Exhibit A

MELINDA HAAG (CSBN 132612)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
JENNIFER S WANG (CSBN 233155)
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UNITED STATES DISTRICT COURT
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**STIPULATION OF DISMISSAL WITH
PREJUDICE**

THE PARTIES IN THE ABOVE-CAPTIONED ACTION HEREBY SUBMIT THE
FOLLOWING STIPULATION:

Pursuant to Federal Rule of Civil Procedure 41(a), plaintiff Bruce Campbell and
defendant Timothy Geithner hereby stipulate to dismiss with prejudice the above-captioned
action, including all claims that were asserted therein. Each party will bear its own costs and
attorneys' fees.

DATED: _____

By: _____
BRUCE CAMPBELL
Plaintiff

STIPULATION OF DISMISSAL WITH PREJUDICE
No. C 10-5861 LB

MELINDA HAAG
United States Attorney

DATED: _____

By: _____
JENNIFER S WANG
Assistant United States Attorney

[PROPOSED] ORDER

The Stipulation of Dismissal with Prejudice is granted and this entire action is
dismissed with prejudice.

IT IS SO ORDERED.

DATED: _____

HON. LAUREL BEELER
UNITED STATES MAGISTRATE JUDGE